

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
Jurisdictional Separations and Referral to the Federal-State Joint Board)	CC Docket No. 80-286

COMMENTS OF THE IOWA UTILITIES BOARD

INTRODUCTION

The Iowa Utilities Board hereby submits comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Further Notice of Proposed Rulemaking* ("FNPRM"), released May 16, 2006 as FCC 06-70.

GOALS

The FNPRM asked for comment about the goals that a new separations regime should pursue, and in particular regarding the enunciated goals for and principles underlying comprehensive separations reform as described in the "Glide Path" papers.¹

An "Exit Ramp"

The Glide Path papers demonstrate that since the current Separations Manual² was written, the network has undergone fundamental change. One has been the gradual deregulation of most incumbent LECs. Many states have now passed

¹ FNPRM ¶ 30.

laws that remove carriers from classical rate of return regulation by state commissions. As the 2005 Glide Path paper recognizes, this argues for the availability of a new and less burdensome separations regime for carriers in those states. If separations results are not relevant for traditional regulatory purposes, no carrier should bear the cost of conducting extensive, detailed separations studies and reporting separations data. As a state that has little regulatory authority over the rates of LECs, Iowa supports the establishment of an “exit ramp” option for incumbent carriers to substantially reduce, or even terminate their separations obligations.

The appropriate conditions for carriers to actually exercise this “exit ramp” option may be surprisingly rigorous to some. Yet separations has become an element of many regulatory structures, and any decision to eliminate a carrier’s separations data should be made only after carefully examining the current uses of that data.

Even where carriers have been “deregulated” or placed on price caps, some form of separations data may still be needed, either by the company or by a different regulator. In addition, some universal service programs depend upon separations data. For example:

- In the interstate jurisdiction most large carriers are on “price cap” regulation. For these carriers, switched access rates are set by rule at a uniform 0.55 cents per minute,³ a rate that does not

² The Separations Manual is codified in 37 C.F.R. Part 36.

³ See 47 C.F.R. § 61.3 (qq) (defining “Target Rate”).

depend on annual cost separations calculations.⁴ Nevertheless, separations rules can still affect these rates. Rates can be adjusted for “exogenous” factors if a carrier has low interstate earnings.⁵ Separated costs are the starting point for calculating whether that precondition has been met.

- Smaller “rate-of-return” carriers use separation results directly in order to calculate interstate access rates. For carriers not participating in pools these rates are calculated on a company-by-company basis. Most smaller carriers participate in the NECA pools and charge uniform industry-wide rates, but even here the calculation of rates, while aggregated across many companies, still depends upon separations results. In sum, for both pooled and unpooled “rate-of-return” carriers, separations controls the amount of interstate costs, which then controls both per-minute “switched access” rates and “special access” rates.⁶
- The High Cost Loop program is intended to limit the intrastate cost of providing high-cost areas served by smaller “rural telephone companies.” High Cost Loop Support depends on “study area average unseparated loop cost per working loop.” This in turn depends upon separations rules (but not the allocation rules) used to categorize outside plant and central office facilities.⁷

⁴ See 47 C.F.R. § 69.152(d)(1). SLCs are also set by a formula that is not dependent on current separations results.

⁵ See 47 C.F.R. § 61.45(b), (d)(1)(vii). Also, rates can be changed for “exogenous” factors if there are changes to separations rules. See 47 C.F.R. § 61.45(b), (d)(1)(iii). Exogenous changes, including separations changes, can also produce modifications to SLCs for any carrier not already charging the maximum SLC. See 47 C.F.R. § 69.104(n)–(p).

⁶ NECA operates two different pools, a common line pool and a traffic sensitive pool. Each has separately identified costs, and each produces separate rates. The allocation of a carrier’s overall costs into the two pools also relies on separations categories defined in Part 36.

⁷ See 47 C.F.R. § 36.631(c), (d). For example, support is provided for category 4.13 Circuit Equipment, which is a category of Central Office Equipment.

- The “Local Switching Support” program depends upon each company’s “projected annual unseparated local switching revenue requirement.”⁸ This number, in turn, depends upon the separations rules to categorize plant within central office plant accounts.
- The “Interstate Common Line Support” program depends on each carrier’s interstate “Common Line Revenue Requirement.”⁹ This in turn depends on the costs assigned to the interstate jurisdiction by separations rules.

To avoid creating downstream problems, a company should be allowed to take the “exit ramp” from separations only if several conditions are satisfied:

1. In the interstate jurisdiction, the company should waive the right to claim exogenous low-end rate adjustments.
2. The company should assert that its rates are deregulated in the state jurisdiction and waives all rights to subsequently claim an unconstitutional confiscation of its property.
3. The state commission should certify that it has no current use for separations results, nor does it expect to have such a need.
4. The FCC should order that the company’s universal service payments are frozen as of the date of opt-out. This will allow USAC to continue calculating universal service support for the exiting carrier and others.
5. The FCC should order that the company will be excluded from future calculations of industry averages that depend upon categorization of plant or upon jurisdictional separation of plant, expenses or revenue amounts.

⁸ See 47 C.F.R. §§ 54.301(a)(1).

⁹ See 47 C.F.R. § 54.901(a).

Other Goals

Match Jurisdiction With Both Revenue and Cost

The Glide Path paper also explained that it is important to match the regulatory jurisdiction over the price of a service with the cost of providing it. A mismatch of this type does not produce the immediate economic harm generated by a cost-revenue mismatch. A different form of harm is likely in this case.

A regulator will have unpredictable incentives if he or she can set rates for a service but has no responsibility to allow recovery of the associated costs. The path of least resistance would be to deregulate the price and leave the consequences to the other regulator. Such arrangements will not be stable in the long run, and it will be highly unlikely for prices to reflect actual costs, because those costs have been moved to the other jurisdiction.

Moreover, a mismatch between costs and jurisdiction may also produce section 254(k) problems. In a competitive environment an unregulated carrier always has an incentive to subsidize its competitive services with revenues from its noncompetitive services. Also, many ILECs have some customers who have no competitive alternatives. An ILEC would have an incentive to collect more than a reasonable contribution to common costs from these customers.

Simplify and Reduce Overhead

The Glide Path II paper observed that it may be desirable to reduce dependence on costly measurement techniques.¹⁰ This is an important goal of separations reform. The burden of separations falls uniquely on incumbent LECs. While

¹⁰ 2005 Glide Path at 5.

these incumbents also benefit in unique ways from the regulatory system, reducing their overhead cost is nevertheless a valid goal.

Cost reduction can be accomplished most directly by simplifying the existing procedures. The FCC and the Joint Board should substantially reduce the complexity of the existing system, which requires a level of precision in some areas that greatly surpasses the precision of other, more financially significant, areas.

Much of the overhead cost of separations arises from usage studies. One possible simplification would be to move all usage-based factors to a single fixed factor for all companies.¹¹ This alone could reduce separations overhead costs substantially. Also, categorization of plant and expense accounts should be avoided, whenever possible.

Nevertheless, carriers differ in how much of their operations are devoted to services that produce interstate revenue only or intrastate revenue only.

Because these inter-company differences are likely to persist, it may not be possible to avoid all categorization and all usage studies.

Exclude Costs Associated With Non-Regulated Services

The Commission has made numerous decisions that declare particular services to be non-regulated non-telecommunications services. Notably, the Commission held in 2005 that wireline broadband Internet access service provided over a provider's own facilities is an information service, not a telecommunications

¹¹ A multi-year phase-in period might be used to reduce the rate impacts of shifting to fixed factors. When the 75-25 factor was adopted in the 1980's it was phased in over several years.

service.¹² Carriers were also given a choice of whether to treat their broadband transmission services as Title II telecommunications services or information services.¹³

Nevertheless, the Commission did not require that the investment associated with these information services be excluded from the costs of regulated services.¹⁴ It recognized that if it “preemptively deregulated” these services the associated investment and expense would, under existing Part 64 rules, necessarily be excluded from amounts subject to separations. To avoid this result the Commission created a new category.¹⁵ Wireline broadband service is now an information service whose facilities are included in rate base. However, under Part 64 rules, states may remove those costs if they wish, even though they have been identified as regulated for federal purposes.¹⁶ In sum, wireline broadband is “semi-deregulated.”

Under this order, the FCC and the individual states may now take quite different approaches to wireline broadband facilities and expenses. They may reach quite different decisions about whether it is regulated, about what portions of common facilities and expenses are attributable to it and, not least, how state decisions to

¹² *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, FCC 05-150 (released Sept. 23, 2005), ¶ 12.

¹³ *Id.* ¶ 138.

¹⁴ The FCC held that to require incumbent LECs to classify their non-common carrier, broadband Internet access transmission activities as nonregulated activities under part 64 rules would impose significant burdens that outweighed the potential benefits. *Id.* ¶ 134.

¹⁵ *Id.* ¶ 130.

¹⁶ *Id.* ¶ 129.

exclude nonregulated investment might the separations factors and categories developed under Part 36 for regulated plant and expense.

The Joint Board and the Commission should seek a uniform method to adapt the separations process to the increased importance of new services like wireline broadband. New rules are clearly needed. States should not be preempted from regulating these services as they see fit, but a national standard method is needed to account for the costs of these services and to decide how the costs of these services will be defined and separated. Unless the Joint Board and Commission solve this problem, carriers face a risk of recovering more or less than 100 percent of their total prudent investment. Decades ago, it was precisely this kind of risk that led to creation of a Joint Board on Separations.

CONCLUSION

For the reasons stated above, the Iowa Utilities Board urges the FCC to develop an exit ramp option to allow carriers in states in which regulation has transitioned from traditional, rate-of-return regulation to an alternative form of regulation, or even deregulation to terminate their separations obligation. Such an option should; however, carefully consider the impacts of removing the separations obligation as it relates to other regulatory needs as the calculation of Universal Service Fund High Cost Support.

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Respectfully submitted,

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